



FEDERAL ELECTION COMMISSION
WASHINGTON, D.C. 20463

Daniel C. McKay, II
Vedder Price
222 North LaSalle Street
Chicago, Illinois 60601

FEB 23 2009

RE: MUR 6168 (formerly PMUR 461)
Park Federal Savings Bank

Dear Mr. McKay:

In the normal course of carrying out its supervisory responsibilities, the Federal Election Commission (the "Commission") became aware of information suggesting that Park Federal Savings Bank may have violated the Federal Election Campaign Act of 1971, as amended (the "Act"). In a letter dated May 2, 2008, we invited Park Federal Savings Bank to respond to the information. Based on its response and other available information, on February 3, 2009, the Commission found reason to believe that Park Federal Savings Bank violated 2 U.S.C. § 441b, a provision of the Act. Enclosed is the Factual and Legal Analysis that sets forth the basis for the Commission's determination.

We have also enclosed a brief description of the Commission's procedures for handling possible violations of the Act. In addition, please note that you have a legal obligation to preserve all documents, records and materials relating to this matter until such time as you are notified that the Commission has closed its file in this matter. See 18 U.S.C. § 1519. In the meantime, this matter will remain confidential in accordance with 2 U.S.C. §§ 437g(a)(4)(B) and 437g(a)(12)(A), unless you notify the Commission in writing that you wish the investigation to be made public.


If you are interested in engaging in pre-probable cause conciliation, please contact Elena Paoli, the attorney assigned to this matter, at (202) 694-1548 or (800) 424-9530, within seven days of receipt of this letter. During conciliation, you may submit any factual or legal materials that you believe are relevant to the resolution of this matter. Because the Commission only

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enters into pre-probable cause conciliation in matters that it believes have a reasonable opportunity for settlement, we may proceed to the next step in the enforcement process if a mutually acceptable conciliation agreement cannot be reached within sixty days. See 2 U.S.C. § 437g(a), 11 C.F.R. Part 111 (Subpart A). Similarly, if you are not interested in pre-probable cause conciliation, the Commission may conduct formal discovery in this matter or proceed to the next step in the enforcement process. Please note that once the Commission enters the next step in the enforcement process, it may decline to engage in further settlement discussions until after making a probable cause finding.

We look forward to your response.

On behalf of the Commission,


Steven T. Walther
Chairman

Enclosures
Factual and Legal Analysis
Procedures

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FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Park Federal Savings Bank

MUR: 6168

I. INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission ("the Commission") in the normal course of carrying out its supervisory responsibilities. See 2 U.S.C. § 437g(a)(2).

II. FACTS

Park Federal Savings Bank ("Park") is a federally chartered savings association in Chicago. GPS Corporation ("GPS") is a wholly owned subsidiary of Park. GPS was incorporated in 1974 and conducted an active insurance agency business until 1994. In 1994, GPS sold its insurance agency business, but not its insurance license, to a third party insurance agency. GPS continued to receive commission payments from the insurance business buyer through 1998 and earned approximately \$27,800. GPS has continued to pay to keep its insurance license because it may decide to re-enter the insurance agency business. GPS continues to have funds in a bank account that it earned previously and remains in good standing with the Illinois Secretary of State. License fees and other expenses have caused GPS to incur approximately \$20,000 in net losses since 1999. GPS's officers and directors are identical to Park's, and the GPS Board of Directors discontinued its meetings in 2005.

GPS made 17 contributions to state and local political committees from August 1, 2003 to August 30, 2007, totaling \$7,950.¹ In addition Park made a \$1,250 contribution to a state or local political committee on June 1, 2004.²

III. LEGAL ANALYSIS

National banks and corporations organized by authority of any law of Congress are prohibited from making any contribution in connection with any election to any political office. 2 U.S.C. § 441b(a). Moreover, in Advisory Opinion 1980-7 (California Savings & Loan League), the Commission said that a wholly owned, state-chartered subsidiary of a federally chartered savings association could not make political contributions if the subsidiary and the parent bank could be characterized as one entity. In other words, "[A] subsidiary corporation is considered a distinct legal entity, an entity in its own right, apart from the parent. However, where circumstances are such that one corporation is merely an agent, instrumentality, or alter ego of another corporation, the notion of separate corporate existence of parent and subsidiary will not be recognized." AO 1980-7 (California Savings & Loan League) (*citing* 18 Am. Jur. 2d *Corporations* § 17 (1980) for discussion of parent-subsidary relationships) (renumbered 18 Am. Jur. 2d *Corporations* §§ 62, 63 (2008)). In such a case, political contributions by the subsidiary would be considered prohibited political contributions by the federally chartered corporation.

Courts consider a variety of factors to determine whether to disregard the corporate entity and hold a parent liable for the acts of its subsidiary, including the failure of the subsidiary to observe corporate formalities, maintain corporate records, or retain functioning officers, and its

¹ State of Illinois campaign disclosure records show that GPS made additional contributions totaling \$2,755 dating to October 13, 1999, but these contributions are not within the five-year statute of limitations.

² State of Illinois campaign disclosure records show that Park made an additional \$2,350 in political contributions that fall outside of the five-year statute of limitations.

1 undercapitalization or insolvency. *See* 18 Am. Jur. 2d *Corporations* §§ 54, 61-65. Courts will
2 disregard the fiction of a separate legal entity when there is such domination of finances, policy,
3 and practices by the parent that the subsidiary has no separate existence of its own and is merely
4 a business conduit for its principal. *Id.* at § 65; *cf.* MUR 5628 (AMEC), First General Counsel's
5 Report at 12-13 (declining to hold parent liable where subsidiary maintained an independent
6 management team and operated with relative autonomy from parent); AO 1998-11 (Patriot
7 Holdings) (superseded in part by limited liability company regulations) (concluding that
8 subsidiaries were not the "agent, instrumentality, or alter ego" of the parent entity where the
9 parent did not pay the salaries or expenses of the subsidiaries, and the subsidiaries' contracts with
10 third parties did not contain clauses holding the parent liable for breach).

11 The available information supports the conclusion that Park and GPS are not separate
12 entities and were not at the time of the relevant contributions. Park and GPS have the same
13 officers and directors, and GPS is wholly owned by Park, has no employees, and has not
14 conducted business since 1994. *See generally* 18 Am. Jur. 2d *Corporations* §§ 41 *et seq.* (factors
15 relevant to corporate veil-piercing analysis). GPS is not an active business despite having an up-
16 to-date insurance license; it is not selling insurance and has not earned money since 1998.
17 Moreover, GPS discontinued Board of Directors meetings in 2005. The GPS Board of Directors
18 met at the time some contributions were made (from 2003-2005), but there is no information
19 suggesting that GPS observed other corporate formalities at that time or thereafter. And,
20 although GPS maintains a separate bank account containing previously earned funds, this appears
21 to be its sole source of independent capital. In sum, GPS does not appear to be operational.

1 Accordingly, it appears that GPS may have been the "agent, instrumentality, or alter ego" of
2 Park, and the \$7,950 in GPS contributions were subject to 2 U.S.C. § 441b(a).

3 Regarding the contributions attributed to Park, whether or not the \$1,250 contribution
4 within the statute of limitations was made by Park or GPS, it also appears to violate the Act,
5 either as a direct contribution by a federally chartered savings association, or in violation of the
6 Act as described above.

7 Therefore, there is reason to believe that Park Federal Savings Bank violated 2 U.S.C.
8 § 441b by making political contributions.